

## **ARTICLE 9**

### **GRIEVANCE PROCEDURE**

#### **Section 1. Grievance Defined.**

A grievance shall mean a complaint of violation, misapplication, or misinterpretation of this Agreement, a claim of unreasonable and arbitrary work order, or a claim that rules and regulations are not reasonable or involve discrimination in application, or a claim of discipline without just cause.

#### **Section 2. Filing A Grievance.**

Whenever an employee or the Association acting on behalf of any employee, or on behalf of all members of the Association, believes a cause for a grievance exists, the grievance procedure provided in this Article shall be followed. Whenever the grievance must be reduced to writing, the grievance shall be stated in clear and concise language, making reference to the Article and Section of this Agreement which is alleged to have been violated or to the specific rule and regulation alleged to be unreasonable or misapplied and shall conform to the specifications provided in Section 5 below. Any grievance filed in writing shall be answered in writing.

#### **Section 3. Association Grievance.**

An Association grievance is defined as a grievance concerning a question which is not an employee or group grievance. An Association grievance shall start at Step 3 of the grievance procedure.

#### **Section 4. Group Grievance.**

A group grievance is defined as a grievance in which the complaints raised are the same with regard to more than one employee, at one or more work locations. A group grievance that involves more than one work location shall start at Step 2 of the grievance procedure.

#### **Section 5. Grievance Content..**

Any employee, Association, or group grievance shall, when required to be in writing, specify:

- a. Name of grievant;
- b. Date of filing;
- c. Date of alleged violation;
- d. Synopsis of events and statements of facts in support of the grievance;
- e. List of known witnesses to alleged contract violation.

- f. Contract Article(s) and Section(s) allegedly violated or rules and regulations claimed to be unreasonable or misapplied;
- g. Adjustment requested.

**Section 6. Presenting a Grievance.**

In processing any grievance, the following steps shall be observed, unless otherwise herein indicated.

**Step 1:** An employee who has a grievance shall orally discuss it with his/her immediate supervisor within seven days of notice of a cause for grievance. For the purpose of this Section, neither Troopers nor Sergeants shall be considered immediate supervisors. The immediate supervisor shall have seven days from the date of discussion to orally inform the employee of his/her answers.

**Step 2:** **District or Division Commander.** If the grievance is not resolved at the first step, and appeal is sought, the employee or the Association representative shall reduce the grievance to writing upon forms mutually agreed to by the Employer and the Association. The employee or the Association shall forward the grievance to the District or Division Commander within seven days of receipt of the answer of the immediate supervisor or, in case of an Association grievance or group grievance within 14 days of the occurrence giving rise to the grievance. Within seven days of receipt of the written grievance, a meeting may be held to discuss the grievance. The District or Division Commander, or his or her designee shall, within 14 days from the date of receipt of the written grievance, present to the employee and the Association a written answer to the grievance.

**Step 3:** **Director/Designee.** If the written answer at the Step 2 does not resolve the grievance and the grievant believes the matter should be carried further, the grievant or the Association may, within seven days after the receipt of the written Step 2 answer, appeal the grievance to the Director or his/her designee. A meeting may be held to discuss the grievance. Within 14 days after receipt of the grievance at Step 3, a written answer to the grievance shall be presented or mailed to the grievant and the Association.

**Step 4:** **Arbitration.** In the event any employee, Association or group grievance is not resolved at Step 3, such grievance(s) may be

referred to arbitration by the Association. Notice of any referral to arbitration must be within 14 days from the postmark of the lower Step 3 answer. The notice shall be in writing and served on the Employer by the Association. Any grievance not responded to by the Employer at the Step 3 level within 14 days may be referred to arbitration by the Association.

The arbitration selection process shall be as follows: Within 30 days after execution of this Agreement and annually, thereafter the Association and Employer shall simultaneously exchange the names of eight bona fide labor arbitrators (who are members of the National Academy of arbitrators, or on the American Arbitration Association or Federal Mediation and Conciliation Service Rolls). Each party shall then have the right to strike five names from the other party's list. The six remaining names shall be the panel of arbitrators to be used in the event of any grievance-arbitration matter.

Only the Association may advance a grievance to arbitration. No individual employee or group of employees shall have the right to advance any grievance to arbitration without the express authority of the Association.

When the demand for arbitration is received by the Employer, representatives of the Association and Employer shall meet and select the arbitrator as follows: by blind draw or lottery, two of the six shall be drawn. The first name drawn will be the arbitrator and second name drawn will be the alternate, in the event the first arbitrator refuses or is unable to serve.

By letter jointly signed, the arbitrator will be requested to serve, provide dates for the hearing, and provide a copy of his/her fee schedule. Copies of the grievance, answer and the grievance-arbitration procedure shall accompany the letter.

Unless mutually agreed otherwise, arbitrations involving suspensions, demotions or discharges shall be held within 30 calendar days. In the event the selected arbitrator is unable to convene a hearing within 30 days, the parties shall seek alternate arbitrators from the panel who are able to convene a hearing within 30 days.

In light of the practical difficulty in scheduling arbitrations within 30 days as provided in the preceding paragraph, it is agreed that where (1) an employee has been discharged following a disciplinary conference, or where (2) an employee who was

suspended without pay under Part A, Section 3d of Article 8 is no longer the subject of active criminal investigation or prosecution, the following procedure will be applied:

- a. Within 3 days of the disciplinary conference in (1) above or issuing a statement of charges proposing termination in (2) above, the parties shall select an arbitrator and an alternate as provided in this section.
- b. The Association will contact first the arbitrator then the alternate to determine if either can convene a hearing within 30 days and, if not, the earliest available dates for each. If the arbitrator or the alternate are scheduled for hearing on another non-discharge matter between the parties, the Association may elect to substitute the discharge case on that date and postpone hearing of the non-discharge matter to a later date.
- c. Upon confirming a hearing date, the Association will immediately notify the Employer of the date and location of the hearing and the parties will appear on the hearing date prepared to proceed. (The Association will provide at least seven working days notice of the hearing date.)
- d. In the event that closing arguments are to be submitted in writing to the arbitrator following the hearing, the parties stipulate to submission and exchange of the arguments within 15 days of the close of proofs or, if applicable, the receipt of the transcripts of the hearing.

The hearing and its decorum shall be in accordance with the American Arbitration Association rules unless otherwise provided in this Agreement, or mutually agreed upon. The parties may agree to submit several issues at the same time to arbitration, particularly if they are related to each other. Upon request, prior to a scheduled arbitration hearing, all documents or other materials not previously provided or exchanged which either party intends to use as evidence for their "case in chief" will be forwarded to the other party. The parties shall have the individual responsibility of placing in writing their assertions and claims and defining the issues.

The arbitrator shall hear the grievance in dispute and shall render a decision in writing within 30 days from the close of the hearing. The arbitrator's decision shall be submitted in writing, and if available in electronic format, and shall set forth the

findings and conclusions with respect to the issues submitted to arbitration. The arbitrator's decision shall be final and binding upon the Employer, the Association and the employee(s) involved.

The arbitrator shall have no authority except to pass upon alleged violations of the expressed written provisions of this Agreement, the unreasonableness or misapplication of a rule and regulation, or that a work order was unreasonable and arbitrary, or involves discrimination in application or a claim of suspension, discharge or demotion without just cause.

The arbitrator shall have no power or authority to add to, subtract from, ignore or modify any of the terms of this Agreement and shall not substitute his/her judgment for that of the Employer where the Employer is given discretion by the terms of this Agreement.

The arbitrator shall construe this Agreement in a manner which does not interfere with the exercise of either the Employer's or the employees' and the Association's rights and responsibilities, except to the extent that such rights and responsibilities may be expressly limited by the terms of this Agreement.

The arbitrator shall not render any decision which would require or permit an action in violation of the Constitution.

The arbitrator may take steps necessary to correct any abuse or to provide a fair resolution to the grievance or issues presented; however, the arbitrator is without authority to change or rewrite any provisions of the Agreement or insert his/her wisdom for that of the Employer or Association. The arbitrator shall have no authority to award back pay for a period of time of more than 30 days from the date the written grievance was filed, except in instances of demotion, suspension or discharge.

There shall be no appeal of the decision of the arbitrator if made in accordance with the jurisdiction and authority conferred upon the arbitrator by this Agreement. However, any decision of the arbitrator, which a party fails to comply with, shall be enforceable by law.

#### **Section 7. Reprisals.**

There shall be no reprisals taken against a grievant, any party in interest to said grievance, or to an Association representative or officer, or against any

witness or participant in the grievance procedure by reason of such participation by either the Employer or the Association.

**Section 8. Time Limits.**

The words "days" herein used shall mean calendar days. Time limits may be extended by the mutual agreement of the parties in writing. If an answer is not timely submitted, the grievant(s) or Association may take said grievance to the next step in the grievance procedure by so notifying the Employer.

**Section 9. Representation.**

The employee or group of employees shall have the right of Association representation or Association counsel upon request at each step of the grievance procedure. The Association shall be the exclusive representative of the employee in all matters pertaining to the enforcement of any rights of the employee under the provisions of this Article.

**Section 10. Cost of Proceedings.**

Except as provided in Article 8 and Appendix A for discipline cases, each party shall pay its own cost of arbitration procedures, including participants. The fee of the arbitrator, his/her travel expenses, and the cost of any room or facilities, and the expenses of the arbitration, including filing fees, shall be borne by the party determined by the arbitrator to have been in the wrong or the arbitrator may allocate the cost between the parties where neither party prevailed in whole. In the event of a pre-hearing settlement or an adjournment mutually agreed upon by the parties, any arbitrator's cancellation fee shall be borne equally by the parties. The expense of a stenographer and/or a transcript, if any, shall be borne by the party requesting it, or equally among the parties requesting it, if more than one party requests.

**Section 11. Scope of Review.**

Wherever review is provided elsewhere in this Agreement (e.g., certain limited forms of disciplinary action, hardship and employee conduct transfers, Probationary employees, and unfair labor practice charges), such review shall be exclusive and not appealable under any circumstances under this Article.

**Section 12. Promotions.**

All complaints and grievances with reference to promotions shall be governed by Civil Service rules, regulations, procedures and appeal processes.